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10 Provident Life and Accident Insurance

Company as Administrator and Fiduciary

11 of the Group Long Term Disability Plan

for Heller, Erhman, White & McAuliffe, and

12 the Group Long Term Disability Plan

for Heller, Erhman, White & McAuliffe

14  
15 IN THE UNITED STATES DISTRICT COURT  
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 Patricia Galvin,

18 Plaintiff,

19 v.

20 Provident Life and Accident Insurance  
Company as Administrator and Fiduciary  
21 of the Group Long Term Disability Plan  
for Heller, Erhman, White & McAuliffe, and  
22 the Group Long Term Disability Plan  
for Heller, Erhman, White & McAuliffe,

23 Defendants.

No: C 07-05195 JF

**JOINT CASE MANAGEMENT  
STATEMENT**

Date: February 1, 2008

Time: 10:30 a.m.

Dept: Courtroom 3, 5<sup>th</sup> floor

27 JOINT CASE MANAGEMENT STATEMENT

28 ACTION NO: C 07-05195 JF

Pursuant to the Court's Initial Case Management Scheduling Order in the above-entitled action, the parties, through their counsel of record, jointly submit this Case Management Statement.

#### **JURISDICTION.**

This action for declaratory, injunctive, and monetary relief is brought pursuant to § 502 of ERISA (29 U.S.C. § 1132), and the Declaratory Judgment Act, 28 U.S.C. § 2201. This Court has subject matter jurisdiction over plaintiff's claims pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States.

Defendant Provident Life has filed its answer in this matter. Defendant, the Group Long Term Disability Plan for Heller, Erhman, White & McAuliffe, was personally served with the summons, complaint and associated documents on November 7, 2007, and will be responding to the complaint by January 25, 2008. There are no other unserved parties to this action, nor do the parties currently have any intent to join any additional parties in this matter.

#### **BRIEF DESCRIPTION OF THE CASE.**

Plaintiff, Patricia Galvin, has brought this case claiming entitlement to long-term disability benefits under the terms of a long-term disability plan obtained through her former employer Heller, Erhman, White & McAuliffe (hereinafter "the Plan") where she was employed as an attorney. The Plan at issue is governed by the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) 28 U.S.C. section 1001, *et seq.*

In January of 2003, plaintiff filed a claim for long-term disability benefits claiming that she was totally disabled. Plaintiff's claim for disability benefits was sent to defendant Provident Life and Accident Insurance Company (hereinafter "UNUM"), the claim administrator under the Plan.

After receipt and review of the claim for disability benefits, defendant UNUM denied plaintiff's claim on or about August 21, 2003. UNUM's decision to deny benefits was upheld

1 on administrative appeal.

2 On or about October 6, 2006, plaintiff requested that defendant UNUM reassess her  
3 claim for long term disability benefits under the provisions of the California Settlement  
4 Agreement (hereinafter the "CSA") which defendant UNUM entered into with the California  
5 Department of Insurance.<sup>1</sup>

6 On or about June 18, 2007, defendant UNUM determined that the decisions to deny  
7 plaintiff's claim(s) were appropriate.

8 **LEGAL ISSUES.**

9 One factual issue in dispute between the parties is whether plaintiff is/ was totally  
10 disabled under the terms of the Plan. An additional factual dispute involves whether plaintiff  
11 is entitled to disability benefits under the terms of the Plan.

12 The principal legal issues in dispute are: 1) the proper standard and scope of review  
13 this Court should apply in resolving this case and how the CSA relates to disposition of this  
14 question; 2) whether the Court's review is limited to the administrative record or whether  
15 consideration of additional evidence will be allowed; 3) whether plaintiff and defendants have  
16 fulfilled their respective duties under the terms of the Plan; 4) whether plaintiff is entitled to  
17 payment of her claim for disability benefits under the Plan; and 5) whether either party is  
18 entitled to attorney's fees under the facts of this case.

19 **MOTIONS.**

20 The parties presently anticipate that this case will be resolved either by way of a one  
21 day court trial, or on cross-motions for summary judgment, depending on the Court's  
22 preference. Defendants wish to explore the possibility of filing a preliminary motion to

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24 <sup>1</sup>. Among other things, the CSA provided that UNUM would provide certain claimants  
25 with an opportunity to have the denial of their long term disability claims re-reviewed and set  
26 forth a standard of review for such claims.

1 determine the applicable standard of review. No other motions are currently anticipated.

2 **AMENDMENT OF PLEADINGS.**

3 The parties do not anticipate amending their respective pleadings at this time.

4 **EVIDENCE PRESERVATION.**

5 Except as otherwise noted herein, the parties presently anticipate that the evidence in  
6 this case will consist only of the administrative record. As such, they are presently unaware  
7 of any issues relating to evidence preservation.

8 **DISCLOSURES.**

9 Plaintiff and defendants anticipate that they will complete their initial disclosures  
10 pursuant to Civil Local Rule 16-5 by January 31, 2008.

11 **DISCOVERY.**

12 Plaintiff requests an allowance of discovery by interrogatories, requests for production,  
13 requests for admissions and depositions of various claims/ medical personnel involved in the  
14 claims decisions in this matter. Defendants contend that discovery is improper because the  
15 Court's review will be limited to the administrative record before UNUM at the time of its claims  
16 decision(s).

17 **RELIEF.**

18 The disability plan at issue provides that subject to certain offsets and a ninety (90) day  
19 eliminations period, plaintiff shall receive two thirds of her monthly earnings if she is "disabled"  
20 under the terms of the plan. At issue are benefits from January of 2003 through the present,  
21 less applicable offsets. Additionally, should she prevail, plaintiff will be seeking interest on her  
22 unpaid benefits and an award of attorney's fees pursuant to 29 U.S.C. § 1132(g).

23 **SETTLEMENT AND ALTERNATE DISPUTE RESOLUTION.**

24 Pursuant to the Court's scheduling order, the parties filed a Notice of Need for ADR  
25 Phone Conference on January 9, 2008. The parties are currently attempting to agree on  
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JOINT CASE MANAGEMENT STATEMENT  
28 ACTION NO: C 07-05195 JF

1 whether mediation or evaluation through the Court's mediation or ENE program, mediation  
2 through a private mediator, or a settlement conference before a magistrate judge, would best  
3 promote a settlement of this matter.

4 **CONSENT TO MAGISTRATE JUDGE.**

5 The parties do not consent to a magistrate judge conducting all further proceedings in  
6 this matter.

7 **OTHER REFERENCES.**

8 The parties do not believe this matter is appropriate for binding arbitration or any other  
9 type of reference.

10 **NARROWING OF ISSUES.**

11 As set forth above, this is a relatively straight forward ERISA denial of benefits case.  
12 With the possible exception of determining what standard of review the court will apply to this  
13 matter, the parties do not currently perceive a need for further narrowing of the issues to be  
14 resolved.

15 **SCHEDULING.**

16 The parties request a trial date in the latter part of 2008. This trial date will allow for all  
17 appropriate summary judgment motions to be concluded in this case. It will further allow the  
18 parties to explore the possibility of settlement with the benefit of the information obtained  
19 through their initial disclosures and discovery.

20 The parties expect this will be a court trial and estimate it will last one day.

21 **DISCLOSURE OF NON-PARTY INTERESTED ENTITIES.**

22 Pursuant to Local Rule 3-16 (b)(3) the parties certify that no interests are known other  
23 than the following:

24 Plaintiff: Patricia J. Galvin.

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JOINT CASE MANAGEMENT STATEMENT  
28 ACTION NO: C 07-05195 JF

1 Defendants: Provident Life and Accident Insurance Company; Heller, Ehrman, White  
2 & McAuliffe Group Long Term Disability Plan.

3  
4 Respectfully submitted,

5 **ROBOOSTOFF & KALKIN**

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8 Dated: January 22, 2008

9 By: \_\_\_\_\_  
10 Scott Kalkin  
11 Attorneys for Plaintiff

12 **KELLY, HERLIHY & KLEIN LLP**

13 Dated: January 22, 2008

14 By: \_\_\_\_\_  
15 John C. Ferry  
16 Attorneys for Defendants  
17 Provident Life and Accident Insurance  
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21 the Group Long Term Disability Plan  
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